



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: B&T International, Inc.--Reconsideration

File: B-224284.2

Date: May 13, 1987

DIGEST

Where, in request for reconsideration, an agency that improperly rejected a bid as nonresponsive for failure to acknowledge an amendment that merely confirmed the only reasonable interpretation of a solicitation makes either hypothetical arguments or ones already considered, there is no basis to overturn a prior decision.

DECISION

The General Services Administration (GSA) requests reconsideration of our decision sustaining the protest of B&T International, Inc., B&T International, Inc., B-224284, Dec. 8, 1986, 86-2 CPD ¶ 654. We found that GSA had improperly rejected B&T's bid as nonresponsive to invitation for bids (IFB) No. 9FCO-OKU-A-A1337/86 for failure to acknowledge an amendment. GSA challenges this conclusion, primarily contending that our Office erred in finding that the amendment did not change, but merely confirmed, the period of performance specified in the solicitation. We affirm our prior decision.

BACKGROUND

The solicitation, issued on April 14, 1986, contemplated the multiple award of requirement contracts for numerous varieties of aluminum alloy pans to be delivered throughout the United States. B&T was the apparent low bidder for four items; GSA, however, rejected the firm's bid as nonresponsive because of B&T's failure to acknowledge an amendment.

We found that B&T's failure to acknowledge this amendment, which provided that the contracts would be effective from date of award until June 30, 1988, could properly be waived as a minor informality. The solicitation as issued included two apparently inconsistent periods of performance. On page 2, it provided that the period of performance would be

from the date of award through June 30, 1986, while the cover sheet specified that the contracts were to run through June 30, 1988. As stated in our original decision, we did not find the solicitation to be ambiguous, i.e., subject to more than one reasonable interpretation. Rather, we found that the intended period of performance was clear. Specifically, we found that the 1986 termination date was obviously in error, since bid opening had been May 14. We found it unlikely that GSA would award contracts for a term of at most 45 days, particularly in view of the estimated quantities included in the IFB. Thus, we concluded that the protester had properly ignored the 1986 date. We also found that the period of performance specified in the cover sheet was incorporated by reference into the solicitation. We concluded that B&T was on notice of the correct contract term and, although, as instructed, it did not return the cover sheet with its bid, it clearly intended to be bound for the entire 2-year period.

DISCUSSION

GSA challenges our decision on two bases. GSA's first contention is founded upon the fundamental principle of government contract law that the responsiveness of a bid must be determined from the bid itself. Since B&T neither acknowledged the amendment nor returned the cover sheet, GSA maintains that the bid cannot be viewed as manifesting B&T's intent to perform for the full 2-year period. GSA therefore concludes that B&T's bid must be rejected as nonresponsive.

The argument essentially repeats one raised by GSA during consideration of the initial protest. We were not then, nor are we now, persuaded by this position. In raising this argument anew, GSA seemingly ignores our initial finding that because the Table of Contents set forth on page 1 of the IFB (Standard Form 33) identified the cover sheet as section A of the solicitation, the cover sheet was incorporated by reference into the solicitation. Therefore, B&T's return of the signed Standard Form 33 evidenced its intent to be bound by all terms of the solicitation, regardless of whether the pages of the IFB containing such terms were also returned.

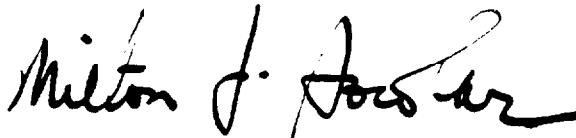
Alternatively, GSA argues that assuming that the bid submitted by B&T did incorporate the terms of the cover sheet, B&T's bid was ambiguous because it contained two inconsistent periods of performance, also making it non-responsive. GSA challenges our finding that the 45-day maximum period of performance specified on page 2 of the solicitation was clearly in error and thereby properly


ignored. GSA argues that a requirements contract for such a short duration would be possible, particularly in case of a reprocurement where a solicitation is issued to cover requirements that were to have been met by a defaulted contractor. GSA further states that the estimated quantities of pans to be delivered under the four items for which B&T was the apparent low bidder were not so great that delivery of the entire amount within 45 days would be inconceivable.

We do not dispute GSA's contention that agencies, in appropriate circumstances, may issue solicitations for contracts of extremely short duration. In deciding this protest, however, we are necessarily concerned with the facts and circumstances surrounding this particular solicitation and not hypothetical situations. GSA does not state, and there is nothing in the record to indicate, that this IFB was for a reprocurement. Moreover, the structure of the bidding schedule indicated that the contracts were to be for a period of far more than 45 days. The schedule set forth both estimated peak monthly requirements and estimated total quantities for each item to be procured, and the total for each item essentially was a multiple of the corresponding monthly requirement. Had GSA in fact contemplated 45-day contracts, it is doubtful that the bidding schedule would have been structured this way.

In summary, the IFB, as initially issued, specified two inconsistent periods of performance. It was, however, subject to only one reasonable interpretation, and thus was not ambiguous. The amendment merely confirmed or clarified the period of performance already imposed by the solicitation, and B&T's failure to acknowledge it consequently was a minor informality. Furthermore, B&T's return of a signed Standard Form 33 evidenced its intent to be bound by all the terms of the solicitation. GSA has not raised any legal or factual grounds that would warrant reversal of these conclusions.

We affirm our prior decision.



 Comptroller General
of the United States